

hours, the Act requires that the employee receive not only compensation for 40 hours at not less than the minimum rate prescribed in section 6 but also “compensation for employment in excess of 40 hours” at a rate not less than one and one-half times such minimum rate, the “regular rate”, on which time-and-one-half overtime pay must be computed for daily hours worked in excess of 12 or weekly hours worked in excess of 56, must be calculated in conformity with these minimum standards.

(d) The following illustrations of the application of these principles in the case of an employee whose applicable minimum wage rate under section 6 is \$1.60 an hour may be helpful. First, suppose the “regular rate” at which such an employee is employed, calculated in accordance with section 7(e) of the Act and part 778 of this chapter, is \$2.40 an hour or more. This would be true of an employee employed solely at a single hourly rate of pay of \$2.40 or more which he receives as straight time compensation for every hour of work. It would likewise be true of an employee, however compensated (whether by a salary for a fixed or variable number of hours, by commissions, piece rates, day rates or other pay systems or by a combination of these), whose pay for all hours worked in the workweek (except amounts excluded under section 7(e)) yields him average hourly straight-time earnings of \$2.40 or more an hour. Since the employee’s regular rate received for all non-overtime hours of work is in such a case not less than one and one-half times his applicable minimum rate under section 6, the compensation requirements of section 7(b)(3) are satisfied for all nonovertime as well as overtime hours worked if he receives compensation at his “regular rate” of \$2.40 or more an hour for all hours worked in his workweek which are not in excess of 12 in his workday or 56 in his workweek, together with extra compensation for overtime in an amount sufficient to provide compensation for all his hours worked in excess of such daily or weekly hours, whichever are greater, at a rate at least 50 percent higher than such regular rate (at least \$3.60 an hour if the

regular rate is \$2.40 an hour). A somewhat different situation is presented, however, where the employee whose applicable minimum wage under section 6 is \$1.60 an hour is paid, as the Act permits, at a wage rate for nonovertime hours up to 40 in the workweek which is not less than the \$1.60 minimum but is not as much as the \$2.40 required for hours of employment in excess of 40. As an example, suppose he is paid \$2 an hour for 40 hours and \$2.40 as required by section 7(b)(3) for hours in excess of 40, and works 60 hours in a workweek in which 10 of his hours worked are in excess of 12 in a workday for which overtime compensation must be paid at not less than one and one-half times his regular rate of pay. Since payment of the \$2 and \$2.40 rates for hours worked up to and in excess of 40, respectively, satisfies the straight-time requirements for compensation under section 7(b)(3), all the compensation requirements for exemption thereunder will be satisfied if, in addition, he is paid for the 10 daily overtime hours an extra sum equal to one-half his “regular rate” multiplied by 10. His regular rate is computed for the workweek by dividing his total straight-time compensation for the week by the number of hours worked for which it is paid and is accordingly \$2.133 an hour ($\$2 \times 40 = \80 ; $\$2.40 \times 20 = \48 ; $\$80 + \$48 = \$128$; $\$128 \div 60 = \2.133 ; see § 778.115 of this chapter). Thus, the section 7(b)(3) compensation requirements are satisfied by payment of straight-time compensation in the amount of \$80 for 40 hours of work and in the amount of \$48 for the 20 additional hours worked, together with \$10.67 as overtime premium for the 10 daily overtime hours ($\$2.133 \times \frac{1}{2} \times 10$), or total pay of \$138.67 for the week.

§ 794.143 Work exempt under another section of the Act.

Where an employee performs work during his workweek, some of which is exempt under one section of the Act, and the remainder of which is exempt under another section or sections, of the Act, the exemptions may be combined. The employee’s combination exemption is controlled in such case by that exemption which is narrower in scope. For example, if part of his work

is exempt from both minimum wage and overtime compensation under one section of the Act, and the rest is exempt only from the overtime pay requirements by virtue of section 7(b)(3), the employee is exempt that week from the overtime pay provisions, but not from the minimum wage requirements. Similarly, an employee who spends part of his workweek in work which would, if done throughout the week, exempt him completely from the overtime pay requirements, and the remainder of the week in work exempt from such requirements only to the extent and under the conditions specified in section 7(b)(3), could be exempt from overtime pay only to such extent and under such conditions. Thus where an employee spends part of his workweek in transporting petroleum products by tank truck for an employer in an enterprise described in section 7(b)(3),

and the remainder of his workweek in driving a taxicab for the employer's taxi business (work exempt from the overtime provisions under section 13(b)(17)), he is eligible for exemption from overtime pay only if he is compensated in such workweek in accordance with the provisions of section 7(b)(3) and only to the extent which that section provides.

RECORDS TO BE KEPT BY EMPLOYERS

§ 794.144 Records to be maintained.

(a) *Form of records.* No particular order or form of records is prescribed by the recordkeeping regulations (part 516 of this chapter). Every employer operating under section 7(b)(3) of the Act is, however, required to maintain and preserve records containing the information and data as set out in §§ 516.2 and 516.21 of this chapter.